

Introduced by Mrs. Stern

ORDINANCE

72-569

NO. 1402

AN ORDINANCE implementing the Shoreline Management Act of 1971; regulating the issuance of Substantial Development Permits and Timber Cutting Permits by the Director of Planning; providing for administration; and prescribing criminal penalties and civil liability.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. PURPOSE. The purpose of this ordinance is to implement the Shoreline Management Act of 1971 (Chapter 286, Laws of 1971, 1st Ex. Sess.) and to regulate development on the shorelines of the county in a manner consistent with the policy declared in section 2 of that act.

SECTION 2. DEFINITIONS. As used in this ordinance, unless the context otherwise requires, the following definitions and concepts apply:

(1) "Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the waters overlying lands subject to this ordinance at any state of water level.

(2) "Director" means the Director of the Department of Planning for King County or his duly authorized designee.

(3) "Master program" shall mean the comprehensive shoreline use plan for King County, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals and standards developed in accordance with the policies enunciated in section 2 of the Shoreline Management Act of 1971.

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(4) "Ordinary high water mark" on all lakes, streams, and tidal water is that mark that will be found by examining the bed banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, or as it may naturally change thereafter: PROVIDED, That in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining saltwater shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water.

(5) "Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or any local governmental unit however designated.

(6) "Shorelines" means all of the water areas within the unincorporated portion of King County, including reservoirs, and their associated wetlands, together with the lands underlying them; except (a) shorelines of statewide significance; (b) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (c) shorelines on lakes less than twenty acres in size and wetlands associated with such lakes.

(7) "Shorelines of state-wide significance" means those shorelines described in section 3(2)(e) of the Shoreline Management Act of 1971 which are within the unincorporated portion of King County.

(8) "Shorelines of the county" are the total of all "shorelines" and "shorelines of state-wide significance" within the county.

1 (9) "Substantial development" shall mean any develop-
2 ment of which the total cost or fair market value exceeds one
3 thousand dollars (\$1,000), or any development which materially
4 interferes with the normal public use of the water or shorelines
5 of the county; except that the following shall not be considered
6 substantial developments for the purpose of this ordinance:

7 a. Normal maintenance or repair of existing structures
8 or developments, including damage by accident, fire or elements;

9 b. Construction of the normal protective bulkhead
10 common to single family residences;

11 c. Emergency construction necessary to protect
12 property from damage by the elements;

13 d. Construction of a barn or similar agricultural
14 structure on wetlands;

15 e. Construction or modification of navigational aids
16 such as channel markers and anchor buoys;

17 f. Construction on wetlands by an owner, lessee or
18 contract purchaser of a single family residence for his own use
19 or for the use of his family, which residence does not exceed a
20 height of thirty-five feet above average grade level and which
21 meets all requirements of the county other than requirements
22 imposed pursuant to this ordinance.

23 (10) "Wetlands" or "wetland areas" means those lands
24 extending landward for two hundred feet in all directions as
25 measured on a horizontal plane from the ordinary high water
26 mark; and all marshes, bogs, swamps, floodways, river deltas,
27 and flood plains associated with the streams, lakes and tidal
28 waters which are subject to the provisions of this ordinance;
29 the same to be designated as to location by the Washington State
30 Department of Ecology.

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SECTION 3. PERMITS REQUIRED FOR SUBSTANTIAL DEVELOPMENT

EXEMPTIONS. (a) No development shall be undertaken by any person on the shorelines of the county unless such development is consistent with the policy of section 2 of the Shoreline Management Act of 1971 and, after adoption and approval, the guidelines and regulations of the Washington State Department of Ecology or the master program.

(b) No substantial development shall be undertaken by any person on the shorelines of the county without first obtaining a Substantial Development Permit from the Director: PROVIDED, That such a permit shall not be required for the development excepted from the definition of substantial development in section 2(9) of this ordinance and for the following development:

(1) Any project with a certification from the governor pursuant to chapter 80.50 RCW;

(2) Any development on shorelines of the county included within a preliminary or final plat approved by the county prior to April 1, 1971, if:

(i) The final plat was approved after April 13, 1961, or the preliminary plat was approved after April 30, 1969, or

(ii) Sales of lots to purchasers with reference to the plat, or substantial development incident to platting or required by the plat, occurred prior to April 1, 1971, and

(iii) The development to be made without a permit meets all requirements of the county, other than requirements imposed pursuant to this ordinance, and

(iv) The development does not involve construction of buildings, or involves construction on wetlands of buildings to serve only as community, social, or recreational facilities for the use of owners of platted lots and the buildings do not exceed a height of thirty-five feet above average grade level, and

1 (v) The development is completed by June 1, 1973.

2 (c) Any person claiming exemption from the permit
3 requirements of this ordinance as a result of the exemptions
4 described in subsection (b) herein may make an application to
5 the Director for such an exemption on forms and in the manner
6 prescribed by the Director.

7 SECTION 4. PERMITS REQUIRED FOR TIMBER CUTTING.

8 (a) Timber cutting is development subject to the
9 provisions of this ordinance; and a Timber Cutting Permit shall
10 be required to cut timber situated within two hundred feet
11 abutting landward of the ordinary high water mark within shore-
12 lines of statewide significance.

13 (b) Timber Cutting Permits shall be granted only when
14 such cutting would be consistent with the criteria set forth in
15 Section 6 of this ordinance.

16 SECTION 5. PERMIT APPLICATION PROCEDURE; FEES;
17 PUBLICATION OF NOTICES; DIRECTOR'S REVIEW; BURDEN OF PROOF.

18 (a) Applications for Substantial Development Permits
19 and Timber Cutting Permits, on forms prescribed by the Director,
20 shall be made with the Director by the property owner, lessee,
21 contract purchaser, other person entitled to possession of the
22 property, or by an authorized agent.

23 (b) A fee in the amount of twenty-five dollars
24 (\$25) shall be paid to the Director at the time an application
25 is submitted, or a request for an extension of a permit is
26 submitted, for proposed development with an estimated total cost
27 of less than one hundred thousand dollars (\$100,000). A fee in
28 the amount of one hundred dollars (\$100) shall be paid for pro-
29 posed development with an estimated total cost of one hundred
30 thousand dollars (\$100,000) or more.

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1 (c) Upon receipt of a proper application, the Director
2 shall instruct the applicant to publish notices of the application
3 at least once a week on the same day of the week for two con-
4 secutive weeks in a newspaper of general circulation within the
5 county. The Director may also require publication through other
6 appropriate newspapers and information media. Within thirty
7 days of the last publication of such notice (as used hereinafter,
8 this term shall mean the last publication of such notice in the
9 newspaper of general circulation within the county), any
10 interested person may submit his views on the application in
11 writing or may notify the Director of his desire to be notified
12 of the action taken by the Director. Within fifteen days of the
13 last publication of such notice, any interested person may also
14 request that a public hearing be held pursuant to the provisions
15 of section 7 of this ordinance. All published notices of appli-
16 cations shall be in a form satisfactory to the Director. Notices
17 of application shall not be published prior to the actual
18 submission of the application to the Director. Affidavits of
19 publication shall be transmitted to the Director within seven (7)
20 days of their final publication.

21 (d) The Director shall review an application for a
22 permit based on the following: the application; the environ-
23 mental impact statement, if one has been prepared; written
24 comments from interested persons; information and comment from
25 other county departments affected and from the Prosecuting
26 Attorney; independent study of the Department of Planning staff;
27 and evidence presented at the public hearing, if any, held
28 pursuant to provisions of section 7 of this ordinance. The
29 Director may require that an applicant furnish information in
30 addition to the information required in the application forms
31 prescribed. Unless an adequate environmental impact statement
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1 has previously been prepared for the proposed development by
2 another agency, the Director shall cause to be prepared such a
3 statement, prior to granting a permit, when the State Environmental
4 Policy Act of 1971 requires such a statement.

5 (e) The burden of proving that the proposed develop-
6 ment is consistent with the criteria set forth in section 6 of
7 this ordinance shall be on the applicant.

8 SECTION 6. CRITERIA FOR GRANTING PERMITS; COMMERCIAL
9 TIMBER CUTTING; SURFACE DRILLING FOR OIL AND GAS. (a) From

10 June 1, 1971, until such time as the master program has been
11 adopted by the King County Council and approved by the Washington
12 State Department of Ecology, a permit shall be granted only when
13 the proposed development is consistent with:

14 (1) The policy of section 2 of the Shoreline Manage-
15 ment Act of 1971; and

16 (2) After their adoption, the guidelines and regula-
17 tions of the Washington State Department of Ecology; and

18 (3) So far as can be ascertained, the master program
19 being developed for King County.

20 (b) After adoption and approval of the master program
21 by the Washington State Department of Ecology, a permit shall be
22 granted only when the proposed development is consistent with:

23 (1) The master program; and

24 (2) The policy of section 2 of the Shoreline Manage-
25 ment Act of 1971.

26 (c) With respect to timber situated within two
27 hundred feet abutting landward of the ordinary high water mark
28 within shorelines of statewide significance, a permit shall be
29 granted only for selective commercial timber cutting, so that no
30 more than thirty per cent of the merchantable trees may be

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1 harvested in any ten year period of time; PROVIDED, That other
2 timber harvesting methods may be permitted in those limited
3 instances where the topography, soil conditions or silviculture
4 practices necessary for regeneration render selective logging
5 ecologically detrimental; PROVIDED FURTHER, That clear cutting of
6 timber which is solely incidental to the preparation of land for
7 other uses authorized by this ordinance may be permitted.

8 (d) Surface drilling for oil and gas is prohibited in
9 the waters of Puget Sound within King County and on all lands
10 within one thousand feet landward from the ordinary high water
11 mark.

12 (e) No permit shall be issued for any new or expanded
13 building or structure of more than thirty-five feet above average
14 grade level on shorelines of the county that will obstruct the
15 view of a substantial number of residences in adjoining areas
16 unless there exists a master program which permits the same and
17 then such permits shall be granted only when overriding consider-
18 ations of the public interest will be served.

19 SECTION 7. PUBLIC HEARING; NOTICE; DIRECTOR'S DECISION.

20 (a) In the following cases, decisions on applications
21 for Substantial Development Permits and Timber Cutting Permits
22 shall not be made until at least one public hearing has been held:

23 (1) one or more interested persons has submitted to
24 the Director, within fifteen days of the final publication of
25 notice of the application, a written request for such a hearing
26 together with a statement of reasons for the request; or

27 (2) the estimated total cost of the proposed develop-
28 ment exceeds one million dollars (\$1,000,000); or

29 (3) the Director determines that the proposed develop-
30 ment is one of broad public significance.

1 (b) The public hearing required under subsection (a)
2 herein shall be conducted by the Director.

3 (c) If a public hearing is required under Section
4 7(a)(1) of this ordinance, fifteen (15) days written notice of
5 the time and place of the public hearing shall be mailed or
6 delivered to the applicant and to any person who has submitted in
7 writing an expression of interest in the application, or a request
8 for a public hearing, or a request for notice of such a hearing.
9 If a hearing is required under Section 7(a)(2) or (3) of this
10 ordinance, notice of such hearing shall be included in that public
11 notice required in Section 5(c).

12 (d) If, for any reason, testimony on any matter set for
13 public hearing, or being heard, cannot be completed on the date
14 set for such hearing, the Director may before adjournment or
15 recess of such matters under consideration, publicly announce the
16 time and place of the continued hearing and no further notice is
17 required.

18 (e) When the Director renders a decision, he shall
19 make and enter written findings from the record and conclusions
20 thereof which support his decision and the findings and conclusions
21 shall set forth the manner in which the decision is consistent
22 with the criteria set forth in Section 6 of this ordinance.

23 (f) The Director shall have the power to prescribe
24 rules and regulations for the conduct of hearings before him; and
25 also to issue summons for, and compel the appearance of witnesses,
26 to administer oaths, and to preserve order. The privilege of
27 cross-examination of witnesses shall be accorded all interested
28 persons or their counsel in accordance with the rules of the
29 Director.

(g) The decision of the Director shall be the final decision of the county on all applications and the Director shall render a written decision and transmit copies of his decision to the persons who are required to receive copies of the decision pursuant to section 8 of this ordinance.

SECTION 8. GRANTING OR DENIAL OF PERMITS; CONDITIONS ATTACHING TO PERMIT; OTHER PERMITS. (a) The Director shall notify the following persons in writing of his final approval, disapproval or conditional approval of a Substantial Development Permit or Timber Cutting Permit application within five days of his final decision:

- (1) The applicant;
- (2) The Washington State Department of Ecology;
- (3) The Washington State Attorney General;
- (4) The King County Building Department;
- (5) Any person who has submitted to the Director written comments on the application;
- (6) Any person who has written the Director requesting notification.

(b) Development pursuant to a Substantial Development Permit shall not begin and shall not be authorized until forty-five days from the date the Director files the approved Substantial Development Permit with the Washington State Department of Ecology and Attorney General, or until all review proceedings initiated within forty-five days of the date of such filing have been terminated.

(c) Construction or substantial progress toward construction of a project for which a permit has been granted pursuant to this ordinance must be undertaken within two years after permit approval or the permit shall terminate. If such progress

1 has not been made, a new permit application will be required. If
2 a project for which a permit has been granted has not been com-
3 pleted within five years after permit approval, the Director
4 shall, at the expiration of the five year period, review the
5 permit and, upon a showing of good cause, either extend the
6 permit for one year, or terminate the permit: PROVIDED, That no
7 permit shall be extended unless the applicant has requested such
8 review and extension prior to the permit expiration date.

9 (d) In granting or extending a permit, the Director
10 may attach thereto such conditions, modifications and restrictions
11 regarding the location, character and other features of the
12 proposed development as he finds necessary to make the permit
13 compatible with the criteria set forth in section 6 of this
14 ordinance. Such conditions may include the requirement to post a
15 performance bond assuring compliance with other permit require-
16 ments, terms, and conditions.

17 (e) Issuance of a Substantial Development Permit or
18 Timber Cutting Permit does not obviate requirements for other
19 federal, state, and county permits, procedures and regulations.

20 SECTION 9. REVIEW BY SHORELINES HEARINGS BOARD. Any
21 person aggrieved by the granting, denying, or rescission of a
22 Substantial Development Permit or Timber Cutting Permit may seek
23 review from the Washington State Shorelines Hearings Board by
24 filing a request for the same with the board within thirty days
25 of receipt of the Director's final order. Concurrently, with the
26 filing of any request for review with the board, the person seeking
27 review shall file a copy of his request with the Washington State
28 Department of Ecology, the Attorney General, and the Director.

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1 SECTION 10. APPLICATION OF THE PERMIT SYSTEM TO
2 DEVELOPMENT UNDERTAKEN PRIOR TO JUNE 1, 1971.

3 (a) Development undertaken on the shorelines of the
4 county prior to June 1, 1971, shall not require a permit except
5 under the following circumstances:

6 (1) Where the activity was unlawful prior to June 1,
7 1971;

8 (2) Where there has been an unreasonable period of
9 dormancy in the project between its inception and June 1, 1971;

10 (3) Where the development is not completed prior to
11 June 1, 1973;

12 (4) Where development occurred prior to June 1, 1971,
13 on a shoreline and continued on to a different lake, river or
14 tributary after June 1, 1971, a permit shall be required for the
15 development undertaken after June 1, 1971.

16 (b) Development undertaken prior to June 1, 1971,
17 shall not continue without a permit into other phases that were
18 not part of the plan being followed at the time construction
19 commenced.

20 SECTION 11. RESCISSION; SERVICE OF NOTICE; HEARING.

21 (a) Any permit granted pursuant to this ordinance may
22 be rescinded or modified upon a finding by the Director that the
23 permittee has not complied with the conditions of his permit.

24 (b) The Director may initiate rescission and modifica-
25 tion proceedings by serving written notice of noncompliance on
26 the permittee.

27 (c) Before a permit can be rescinded or modified, a
28 public hearing shall be held by the Director no sooner than 30
29 days following the service of notice upon the permittee. The
30 Director shall have the power to prescribe rules and regulations
31 for the conduct of such hearings.

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1 SECTION 12. SHORELINES INVENTORY. The Planning
2 Department shall complete by December 1, 1972, a comprehensive
3 inventory of the shorelines of the county. Such inventory shall
4 include but not be limited to the general ownership patterns of
5 the lands located therein in terms of public and private owner-
6 ship, a survey of the general natural characteristics thereof,
7 present uses conducted therein and initial projected uses thereof.

8 SECTION 13. COUNTY MASTER PROGRAM. The Planning
9 Department shall develop, within eighteen months after the
10 adoption of state guidelines by the Washington State Department
11 of Ecology as required by section 7 of the Shoreline Management
12 Act of 1971, a master program for regulation of uses of the
13 shorelines of the county consistent with the guidelines adopted.
14 The master program or segments thereof shall be submitted to the
15 Washington State Department of Ecology and shall become effective
16 when adopted or approved by the Department as appropriate. All
17 guidelines and the master program adopted or approved and this
18 ordinance shall be available for public inspection at the office
19 of the Planning Department.

20 SECTION 14. DEPARTMENT OF BUILDING; INSPECTION.

21 (a) In the case of development subject to the permit
22 requirements of this ordinance, the Director of King County
23 Department of Building shall not issue any permit for such
24 development until such time as a permit has been granted pursuant
25 to this ordinance. Any permit subsequently issued by the
26 Department of Building for such development shall be subject to
27 the same terms and conditions which apply to the permit granted
28 pursuant to this ordinance.

(b) The Director of the King County Department of Building or his authorized representative may inspect properties as necessary to determine whether permittees have complied with conditions of their respective permits and, whenever there is reasonable cause to believe that development has occurred upon any premises in violation of the Shoreline Management Act of 1971 and this ordinance, enter upon such premises at all reasonable times to inspect the same. The Director or his representative shall present proper credentials before demanding entry. If such premises are unoccupied, a reasonable effort shall be made to locate the owner or tenant and demand entry. The Director of the Department of Building shall seek review and comment from the Department of Planning on the violations discovered and shall then issue a notice and order to the owner or tenant of the premises advising such person(s) of any violations and requiring him to take whatever action is necessary to comply with the Act and this ordinance. Subsequently, he shall also seek appropriate legal sanctions by the King County Prosecuting Attorney as provided in section 15 of this ordinance.

SECTION 15. CRIMINAL PENALTIES; CIVIL LIABILITY.

(a) Any person found to have willfully engaged in activities on the shorelines of the county in violation of this ordinance or the Shoreline Management Act of 1971 or in violation of the master program, rules or regulations adopted pursuant thereto shall be guilty of a gross misdemeanor, and shall be punished by a fine of not less than twenty-five dollars (\$25) nor more than one thousand dollars (\$1000) or by imprisonment in the county jail for not more than ninety days, or by both fines and imprisonment: PROVIDED, That the fine for the third and all subsequent violations in any five-year period shall be not less than five hundred dollars (\$500) nor more than ten thousand dollars (\$10,000).

1 (b) The King County Prosecuting Attorney shall bring
2 such injunctive, declaratory, or other actions as are necessary
3 to insure that no uses are made of the shorelines of the county
4 in conflict with the provisions of this ordinance or the Shore-
5 line Management Act of 1971 or in conflict with the master
6 program, rules or regulations adopted pursuant thereto, and
7 to otherwise enforce the provisions of this ordinance and the
8 Shoreline Management Act of 1971.

9 (c) Any person subject to the regulatory program of
10 this ordinance who violates any provision of this ordinance or
11 the provisions of a permit issued pursuant thereto shall be liable
12 for all damage to public or private property arising from such
13 violation, including the cost of restoring the affected area,
14 within a reasonable time, to its condition prior to such violation.
15 The King County Prosecuting Attorney shall bring suit for damages
16 under this subsection on behalf of the county. Private persons
17 shall have the right to bring suit for damages under this sub-
18 section on their own behalf and on behalf of all persons similarly
19 situated. The court in its discretion may award attorney's fees
20 and costs of the suit to the prevailing party.

21 SECTION 16. RULES OF THE DIRECTOR. The Director is
22 authorized to adopt such rules as are necessary and appropriate
23 to implement this ordinance. The Director may prepare and
24 require the use of such forms as are necessary to its adminis-
25 tration.

SECTION 17. SEVERABILITY. If any provision of this ordinance or its application to any person or circumstance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance.

PASSED by the Council at a regular meeting thereof on
the 16th day of October, 19 72.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Anne J. Bender
Chairman

ATTEST:

Administrator-Clerk of the Council

APPROVED this 26th day of October, 1972.

~~King County Executive~~